89-665

CASE NUMBER: _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ALI YAZDCHI,
Petitioner

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

PETER D. WILLIAMSON
& ASSOCIATES
PETER D. WILLIAMSON
Counsel of Record
Texas Bar No. 2162500
333 Clay Street, Suite 3800,
Houston, Texas 77002
(713) 751-0222

Attorneys for Petitioner

Alpha Law Brief Co., Inc. — 8748 Westpark — Houston, Texas 77063 — 789-2000

5 cp/s

QUESTIONS PRESENTED FOR REVIEW

Ali Yazdchi, a lawful permanent resident alien of the United States since 1981, was charged with misdeameanor theft in 1979. He pleaded nolo contendere and was fined $100.00. In 1983, he was charged with switching price tags, also a misdeameanor offense. He was fined $200.00 and sentenced to three days in jail.

There was no evidence that Mr. Yazdchi was guilty. He never said he was guilty. No facts or evidence was introduced against him. He took a well-acknowledged procedural shortcut in the minor criminal charges against him.

These two convictions became the basis of a deportation case against him. Under 8 USC Sec. 1251 (a)(4), aliens who have been convicted of two crimes of moral turpitude, not arising out of a single scheme of misconduct, are deportable.

Over strenuous objections, the records of conviction, each reciting that one Ali Yazdchi pleaded nolo contendere, were admitted into evidence against him. On the basis of these documents, he was found deportable as charged.

The Texas Rules of Evidence and the Texas Code of Criminal Procedure provide that a plea of nolo contendere is not admissible against the Defendant who made the plea in any civil suit based upon or growing out of the act upon which the criminal process is based. Should the federal agencies be allowed to ignore the State codes or should they be required to interpret the federal statutes in such a manner as to give them some

effect consistent with the proper administration of the federal statutes and regulations?

Furthermore, the Immigration & Naturalization Service has the burden of proving that Mr. Yazdchi is deportable by clear, convincing, and unequivocal evidence. To prove its case by "clear, convincing and unequivocal evidence", INS used convictions which stated on their face that they were based upon nolo contendere pleas. With that higher burden of proof, Mr. Yazdchi was found deportable—in an instance where there was never any evidence at all introduced against him to show that he was guilty of the minor criminal offenses with which he was charged. Does this violate Due Process? Furthermore, because the convictions stated on their face that they were based upon pleas of nolo contendere, did the Immigration Judge err by admitting them into evidence?

LIST OF ALL PARTIES

Ali Yazdchi
Immigration and Naturalization Service

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASE NUMBER: _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ALI YAZDCHI,
Petitioner

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

STATEMENT OF JURISDICTION

The date of the judgment sought to be reviewed is July 25, 1989.

28 U.S.C. Sec. 2101(c) sets the time limit for filing Petitions for Writs of Certiorari at 90 days after the judgment.

The statutory provision that confers on this court the jurisdiction to review this case is 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

AMENDMENT 5—CONSTITUTION OF THE UNITED STATES OF AMERICA

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Graund Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT 10 — CONSTITUTION OF THE UNITED STATES OF AMERICA

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people.

8 U.S.C. 1251(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

> . . . . ;
>
> (4) [(A)] is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal mis-

conduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial; or (B) is convicted of an aggravated felony at any time after entry;

(5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266(c) of this title, or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended [see 22 U.S.C. 618(c)], or has been convicted under section 1546 of title 18 of the United States Code;

18 U.S.C.S. § 1546

§ 1546. Fraud and misuse of visas, permits, and other entry documents

Whoever, knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, or document, knowing it to be forged, counterfeited, altered, or falsely made, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of

a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code [28 U.S.C.S. § 1746], knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

RULE 410 OF THE FEDERAL RULES OF EVIDENCE. Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) . . . ;

(2) a plea of nolo contendere; . . .

RULE 11 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE. PLEAS

. . . ;

(b) Nolo contendere. A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

. . . ;

(e) (6) Inadmissibility of pleas, plea discussion and related statements.

Except as otherwise provided in this paragraph, evidence of the following is not in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) . . . ;

(B) a plea of nolo contendere; . . .

RULE 410 OF THE TEXAS RULES OF CIVIL EVIDENCE. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS AND RELATED STATEMENTS.

Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant

who made the plea or was a participant in the plea discussions:

(1) . . . ;

(2) a plea of nolo contendere; . . .

ART 27.02. OF THE TEXAS CODE OF CRIMINAL PROCEDURE Defendant's pleadings

The pleadings and motions of the defendant shall be: . . . (5) A plea of nolo contendere, the legal effect of which shall be the same as that of a plea of guilty, except that such a plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based; . . .

STATEMENT OF MATERIAL FACTS

Ali Yazdchi, the petitioner, is a citizen of Iran. He became a lawful permanent resident of the United States in 1981. In 1979 he was charged in the county court in Jefferson County, Texas, with the misdeameanor offense of theft. He pleaded nolo contendere and was fined $100.00. In 1983 he was charged in county court in Harris County, Texas, with switching price tags, also a misdemeanor offense, to which he pleaded nolo contendere and was fined $200.00[1] In both cases, no evidence was introduced against him. On the basis of the pleas of nolo contendere he was convicted in each of the cases; and those convictions became the basis for a deportation case against him. Aliens who have been convicted of two crimes of moral turpitude, not arising out of a single

1. He was also sentenced to three days in jail and given credit for two days. Under the practice at the time, this left him with no time to actually serve.

scheme of criminal misconduct, are deportable. 8 U.S.C.S. Sec. 1251(a)(4).

Over objection, the records of conviction, each reciting that one Ali Yazdchi had pleaded nolo contendere, were admitted into evidence against him. On the basis of these documents, he was found deportable as charged.

BASIS OF FEDERAL JURISDICTION

The court of first instance was the United States Court of Appeals for the Fifth Circuit. The basis for its jurisdiction was 8 U.S.C. 1105a(a) which confers exclusive jurisdiction for appeals from decisions of the Board of Immigration Appeals regarding deportation matters on the Circuit Courts of Appeals.

Venue was set forth in 8 U.S.C. 1105a(a) since the Petitioner's residence was Houston, Texas, a place within the jurisdiction of the United States Court of Appeals for the Fifth Circuit.

ARGUMENT

ISSUE NUMBER ONE: The federal agencies cannot simply ignore the State codes, but should interpret the federal statutes in such a manner as to give them some effect—even as much effect as possible consistent with the proper administration of the federal statutes and regulations.

In this case the respondent pleaded nolo contendere in two misdemeanor criminal cases against him in Texas state courts. Pursuant to his pleas, he was found guilty. In one case he was fined $100.00; in the other he was fined $200.00 and sentenced to three days in jail.

The Texas Code of Criminal Procedure, Art. 27.02, provides as follows:

> "On the part of the defendant, the following are the only pleadings:
>
> "5. A plea of nolo contendere. The legal effect of such shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based; . . ."

Yazdchi, who had been lawfully admitted for permanent residence prior to that time, was then served with an order to show cause why he should not be deported for a violation of Section 241(a)(4) of the Immigration and Nationality Act, 8 U.S.C.S. Sec. 1251(a)(4) which provides for the deportation of an alien who is convicted of having committed two crimes involving moral turpitude.

At the deportation hearing, petitioner's counsel objected strenuously to the introduction of the State Court records of conviction, on the basis that each recited that Yazdchi had been found guilty based upon his plea of nolo contendere, as those pleas were stated right on the face of the judgment and sentence being introduced against Yazdchi.

The Immigration Judge refused to accept the copies of the Texas statute into evidence, and he refused to read them. He stated,

> "While we were off the record, Mr. Williamson, you graciously offered me the opportunity to read the various rules, criminal rules, that you have cited and I've declined that opportunity, simply based on the fact that this is not the proper forum to raise . . . wage a collateral attack or a Constitutional attack."

The Immigration Judge then admitted into evidence the judgments of conviction. The Immigration Judge found the petitioner deportable, based upon the two convictions, which were tainted by the recital of the plea of nolo contendere.

On appeal, the Board of Immigration Appeals barely mentioned the existence of Art. 27.02(5) of the Texas Code of Criminal Procedure. The Board merely held that since Yazdchi had been convicted, that was sufficient.

Immigration matters are civil matters. There is no dispute about that; many cases have so held. *Harisiades v. Shaughnessy,* 342 U.S. 580, 96 L.Ed. 586, 72 S.Ct. 512 (1952); *Jolley v. INS,* 441 F.2d 1245 (5th Cir. 1971), *cert. den.,* 404 U.S. 946, 92 S. Ct. 302, 30 L.Ed.2d 262 (1971). But like child custody cases, juvenile proceedings, or involuntary bankruptcy, the designation of them as "civil" does not detract in the least from their potentially horrible impact upon a person. *Ng Fung Ho v. White,* 259 U.S. 276, 284, 66 L.Ed. 894, 42 S. Ct. 492 (1922).

The Immigration Judge himself, during this hearing, acknowledged that this is a civil proceeding.

Texas law is clear that convictions based upon pleas of nolo contendere cannot be used against a person in a subsequent civil proceeding. As stated earlier, the Texas Code of Criminal Procedure states that a plea of nolo contendere cannot be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based. Moreover, Rule 410 of the Texas Rules of Civil Evidence states that evidence of a plea of nolo contendere IS NOT ADMISSIBLE against the defendant who made the plea.

The federal counterparts to these Texas provisions are Rule 410 of the Federal Rules of Evidence and Rule 11 of the Federal Rules of Criminal Procedure.

This principle has been affirmed by both the State Courts and the Fifth Circuit. *Lynch v. Port of Houston Authority,* 671 S.W.2d 954 (Tex. App. [14 Dist.] 1984); *General Electric Company v. City of San Antonio,* 334 F.2d 480, (5th Cir. 1964).

While this case was pending at the BIA, the government argued in its brief that the sole issue before the Court in *General Electric Company v. City of San Antonio, supra,* was whether a judgment of conviction entered upon a plea of guilty was a "consent judgment" within the meaning of the Clayton Act. The BIA summarily dismissed any serious consideration of the question because the Court was construing the Clayton Act, not the Immigration and Nationality Act. But it is important to consider the Court's attitude as expressed therein, concerning the legal effect to be given to convictions based upon pleas of nolo contendere. It may be dicta. It may be in connection with another Act. But it is there and it is important, even if it is distinguishable. It is not enough to simply say that it is worthless because it is in connection with a different Act.

In *General Electric Company, supra,* the Court pointed out that the issues concerning pleas of nolo contendere were not before the Court, simply because no question was raised. *Id.* at 480. Everyone agreed that pleas of nolo contendere could not be considered "consent judgments." The Fifth Circuit held that even pleas of guilty could be considered consent judgments within the meaning of the Clayton Act. But this apparently did not reach so far as the pleas of nolo contendere.

The Fifth Circuit previously moved to restrict the use of convictions based upon pleas of nolo contendere, in subsequent civil proceedings. See *Mickler v. Fahs,* 243 F.2d 515 (5th Cir. 1957). In that case (a civil action to recover taxes paid) the government's lawyer asked the plaintiff on cross examination if he were the same person who had been indicted for tax evasion, had pleaded nolo contendere, and had been convicted and fined. Although the trial court instructed the jury to disregard that, it was considered by the Fifth Circuit to be of such a prejudicial nature that the case was reversed, and a new trial was ordered. See also *Piassick v. U.S.,* 253 F.2d 658 (5th Cir. 1958). Although the effect of these cases has been somewhat limited in the past 30 years, they are still important to tell us just how damaging these prior pleas can be, and how the policy of this Court was to protect the utility of that plea. That is right: protect its utility. It is part of the plea bargaining process, which is desirable and to be encouraged. *Santobello v. New York,* 404 U.S. 257, 30 L.Ed.2d 427, 92 S. Ct. 495 (1971). States cannot encourage them if the federal government ignores the protections afforded. And "ignores" is the proper word, because that is exactly what the immigration judge and Board of Immigration Appeals did. The immigration judge would not even read it and the Board did not consider its effect in its opinion or give it more than a passing reference.

The rules mean what they say. Whatever the consequences, "plain meaning must be attributed to plain words." *Jay v. Boyd,* 351 U.S. 345, 100 L.Ed. 1242, 76 S. Ct. 919 (1956). Laws should receive a sensible construction. *Holy Trinity Church v. U.S.,* 143 U.S. 457, 36 L.Ed. 226, 12 S. Ct. 511 (1892).

The legal effect of a plea of nolo contendere is that the conviction simply may not be used against a defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution was based.

The immigration courts, although administrative, are bound by such laws.

It is not uncommon for the Board of Immigration Appeals to review and consider the state laws in deportation proceedings. *Matter of Ozkok*, ____I & N Dec.____, Interim Decision #3044 (BIA 1988). See also *Matter of Khalik*, 17 I & N Dec. 518 (BIA 1980). There, the alien had been convicted in state court in Michigan based upon his pleas of guilty, for having issued bad checks. The immigration judge and the Board of Immigration Appeals examined the Michigan state statutes which the respondent was found to have violated and concluded that the crime in question was one involving moral turpitude. In that case, the Board of Immigration Appeals recited the same litany it recited in this case, that

> ". . . [I]n so far as deportation proceedings are concerned, an immigration judge cannot go behind the judicial record to determine the guilt or innocence of an alien. *Matter of McNaughton*, 16 I & N Dec. 569; *Matter of Fortis*, 14 I & N Dec. 576; *Matter of Sirhan*, 13 I & N Dec. 592. In as much as the records of conviction show that the respondent pleaded guilty to both offenses, the immigration judge properly found that the respondent was guilty of the alleged crimes.

Id. at 519.

In *Khalik*, the alien had pleaded guilty. Would it have been any different if the examination showed that the alien had pleaded nolo contendere? Perhaps. That is one of the issues in this case. Since in *Khalik* the Immigration Court and the Board of Immigration Appeals did look at the record of conviction, and did look to see what the plea had been, and they did look at the state statutes and consider their meaning, they must do so in this case as well. And in so doing, they have to consider the legal affect of the plea of nolo contendere.

In this case, they did not even bother to treat the state statute as though it existed. Is this what our federal system has come to?

And when they do consider Art. 27.02(5) of the Texas Code of Criminal Procedure, they must consider themselves bound by that state law as well as the provision in the criminal code which the alien is alleged to have violated. How can they be bound by one and not the other? The immigration courts cannot just pick and choose which laws to consider and which to ignore.

The Tenth Amendment of the U.S. Constitution gives great broad power to the States. Among the powers reserved to the States is the maintenance of judicial systems for resolution of legal controversies. *Atlantic C.L.R. Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 26 L.Ed.2d 234, 90 S. Ct. 1739 (1970). And the federal agencies may not exercise their power in such a way that it impairs the integrity of the states or their ability to function effectively within the federal system. *Fry v. U.S.*, 421 U.S. 542, 44 L.Ed.2d 363, 95 S. Ct. 1792 (1975); *National League of Cities v. Usery,* 426 U.S. 833, 49 L.Ed.2d 245, 96 S. Ct. 2465 (1976).

The states are sovereign in the administration of their criminal justice system. *Screws v. United States,* 325 U.S. 91, 89 L.Ed. 1495, 65 S. Ct. 1031 (1945).

The Board of Immigration Appeals recognized this and have themselves acknowledged and considered themselves bound by and subordinate to state court interpretations of their own rules of criminal procedure. *Matter of Ozkok.*, ____I & N Dec.____, Interim Decision #3044 (BIA 1988). How is this case any different? In fact, in this regard, it is indistinguishable. It may be that once the immigration judge and/or the Board of Immigration Appeals consider this issue, they will rule against the petitioner. But they have not considered it. They have not ruled upon it. They must do so. Perhaps upon consideration of the issue, they will decide that some evidence of the alleged crime should be introduced, as well as the mere "judgment and sentence."

ISSUE NUMBER TWO: The cases construing the use of state convictions based upon pleas of nolo contendere should be narrowly construed and confined to their facts.

In affirming the Board of Immigration Appeals' decision, the Fifth Circuit relied primarily upon *Qureshi v. INS,* 519 F.2d 1174 (5th Cir. 1975).

In *Qureshi,* the Court attempted to distinguish the *Mickler* and *Piassick* decisions, *supra,* as referring to mere rules of evidence. One important difference is that in the case at bar, the evidence objected to was in the form of the judgment for the state court, which actually recited on its face that the defendant had entered a nolo contendere plea. Here, we are dealing with a rule of evidence.

In deportation proceedings, INS has the burden of proving deportability by clear, convincing and unequivocal evidence. In order to prove deportability under 8 U.S.C. 1251(a)(4), INS attempted to submit into evidence certified copies of the convictions. Yazdchi objected to the introduction of this evidence because the face of the convictions state that they were based upon a plea of nolo contendere. The evidence was tainted because both the Texas Rules and the Federal Rules state that the evidence of a plea of nolo contendere IS NOT ADMISSIBLE against the defendant who made the plea. When the Immigration Judge allowed these convictions into evidence, he also allowed the pleas of nolo contendere into evidence, in violation of the rules. This IS an evidentiary problem because the conviction (which clearly states it is based on a nolo contendere plea) is what INS used to prove Mr. Yazdchi's deportability.

The year after *Qureshi*, the Fifth Circuit decided *United States v. Morrow*, 537 F.2d 120 (5th Cir. 1976), a case in which the government was permitted to introduce into evidence judgments of conviction against two defendants, which judgments showed on their faces that the defendants had pleaded nolo contendere. This evidence was admitted in error, said the Fifth Circuit, and the convictions of these two defendants were reversed. In *Morrow*, the government argued that there was a "recognized distinction" in the Fifth Circuit "between the plea of nolo contendere and the conviction based upon the plea". Although the Fifth Circuit Court did not rule directly on the merits of the issue, the court did reject the government's argument that the distinction was "well settled" in the Fifth Circuit. *Id.* at 144.

The Fifth Circuit reversed the conviction of two defendants because:

> . . . the Judgments of Conviction provided to the jury in the instant case disclosed on their faces that both appellants had pleaded nolo contendere to the conspiracy to defraud and postal fraud charges brought in the Northern District of Ohio. This fact is not buried in a welter of other information stated in the Judgment of Conviction; the form, on the contrary, is simple in design and the nolo contendere plea is revealed in a clause typed onto the largely printed form. . . .

Id. at 144-45.

In a footnote, the court rejected the government's argument that, by failing to move specifically for deletion of the references to the nolo contendere pleas in the judgments of conviction, the defendants waived their challenge to the admission of their judgments.

> . . . The Judgments of Conviction, as proffered by the Government, should have been excluded by the district court; it is incumbent upon the Government to present its documentary evidence in a properly admissible form. Appellants, given their timely objections to two items of documentary evidence, were certainly under no burden to assist the Government in making that evidence properly admissible. Appellants objections were sufficiently specific.

Id. at 144.

In reversing the convictions of the two defendants, the court also noted the following:

> ". . . [T]he rule in the Fifth Circuit generally forbids the use of a plea of nolo contendere for the purposes

> of impeachment or to show knowledge or intent in a proceeding different from that where the plea was offered."

Obviously, then, the Fifth Circuit has expanded the prohibitions on the use of these documents beyond being just a "rule of evidence". It cannot be used to show knowledge or intent in the prior proceeding. That is the *Piassick* rule. But *Morrow* goes on to create a new rule: It cannot be used to show guilty knowledge or intent. That raises an interesting issue, because a person cannot be deported for criminal activity if he or she did not have knowledge or intent on his part. To do that would be to violate the Due Process principles of the Fifth Amendment. *Lennon v. INS*, 527 F.2d 187 (2nd Cir. 1975).

Yazdchi is arguing for an expansive reading of the *Morrow* decision and a narrow reading of the *Qureshi* decision. After all, deportation statutes should be construed in favor of the alien. *Mashi v. INS*, 585 F.2d 1309 (5th Cir. 1978).

In the *Qureshi* case, the alien was being deported under a different section of law than that involved here, 8 U.S.C.S. Sec. 1251(a)(5), instead of Sec. 1251(a)(4). The (a)(5) statute is a statute specifically focused on the deportation of aliens who have committed identified felony offenses against the federal government. Yazdchi did not do anything like that.

Furthermore, even though Mr. Qureshi had been convicted on his plea of nolo contendere, the government had in its files the evidence of his offense. The charge against him was a visa fraud, a felony violation of 18 U.S.C.S. Sec. 1546. The INS and/or the United States would have been the complainant. That is qualitatively different from

charges of switching a price tag, and a $100.00 fine; and a case in which there was simply not a scintilla of evidence of Yazdchi's culpability or guilt.

The government will no doubt urge the language in *Qureshi,* referring to a "conviction" being the most important part of the case. But the Court suggested otherwise in *Morrow,* 537 F.2d at 144:

> ". . . if the defendant had properly objected to the evidence of the nolo contendere plea, the conviction itself would have been inadmissible for impeachment purposes."

In short, says the Court in *Morrow,* there is no distinction between the plea of nolo contendere and the conviction—at least for purposes of impeachment. Why should it be a different rule, so very opposite, and with such destructive impact, in this case? To maintain that stance is to ignore the *Mashi* rules of construction.

There are no cases counsel has found sustaining deportation under 8 U.S.C.S. Sec. 1251(a)(4), for convictions based solely upon pleas of nolo contendere. Even *Zinnati v. INS,* 651 F.2d 420 (5th Cir. 1981) was a deportation case based upon pleas of guilty.

For these reasons, the Fifth Circuit erred in relying on *Qureshi.*

PRAYER

Wherefore, premises considered, Petitioner prays that this Honorable Court grant him a Writ of Certiorari and all other relief that he might be entitled to in law or in equity. Mr. Yazdchi was found deportable based upon tainted evidence in violation of the Texas Rules and the Federal Rules. We pray that this Honorable Court grant him a measure of justice by holding that his deportation order be reversed and that it was not based upon clear, convincing and unequivocal evidence.

Respectfully submitted,

PETER D. WILLIAMSON
& ASSOCIATES

Peter D. Williamson

PETER D. WILLIAMSON
Counsel of Record
Texas Bar No. 2162500
333 Clay Street, Suite 3800
Houston, Texas 77002
(713) 751-0222

Attorneys for Petitioner

CERTIFICATE OF SERVICE

This is to certify that three (3) true copies of the foregoing PETITION FOR WRIT OF CERTIORARI and Appendix were served upon:

Solicitor General
Department of Justice
Washington, D.C. 20530

and

Commissioner of Immigration
U.S. Immigration & Naturalization Service
425 I Street N.W.
Washington, D.C. 20536

by Federal Express addressed as above.

Done on this 20th day of October, 1989.

Peter D. Williamson

PETER D. WILLIAMSON
Attorney for Petitioner

APPENDIX

TABLE OF CONTENTS

APPENDIX I

Ali YAZDCHI

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

No. 89-4078

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

July 25, 1989.

Alien was ordered to be deported by the Immigration and Naturalization Service because of convictions for two petty property crimes involving moral turpitude, and alien appealed. The Court of Appeals, held that alien was subject to deportation on basis of convictions, though convictions were entered on pleas of nolo contendere.

Affirmed.

Petition for Review of an Order of the Immigration and Naturalization Service.

Before GEE, WILLIAMS, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

Yazdchi, ordered to be deported because of convictions for two petty property crimes involving moral turpitude, appeals. His point for reversal is that these convictions were entered on pleas of nolo contendere, citing to us such authorities as *United States v. Morrow*, 537 F.2d 120 (5th Cir. 1976). *Morrow* holds that a plea of nolo contendere, being a mere statement of unwillingness to contest a charge, is not an admission for impeachment purposes or to show knowledge or intent as is a guilty plea.

This is nothing to our present purposes, however. These regard the *fact* of convictions, not the manner in which they were arrived at. 8 U.S.C. § 1251(a)(4). For Yazdchi's point to be valid, it would be necessary for us to determine that a conviction on such a plea is not a conviction at all. That is not so. *Qureshi v. INS*, 519 F.2d 1174 (5th Cir. 1975). *See, also, Noell v. Bensinger*, 586 F.2d 554 (5th Cir. 1978).

[1, 2] Yazdchi adds a complaint that in ruling as they did the immigration authorities disregarded the Texas statute on the effect of a nolo plea. That statute, Article 27.02(5), Texas Code of Criminal Procedure, provides in part that:

> The legal effect of plea of nolo contendere shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based; . . . .

Nor does this avail him. As *Qureshi* observes, the consequences which a state chooses to attach to a conviction in its courts for purposes of its own law are for it to say; but they cannot control the consequences to be given it in a deportation proceeding—a function of federal law. *Qureshi,* 519 F.2d at 1176. Nor is such a proceeding one "based upon or growing out of the act upon which the criminal prosecution is based; . . . ."

AFFIRMED.

APPENDIX II

U.S. DEPARTMENT OF JUSTICE
Executive Office for Immigration Review
Falls Church, Virginia 22041

DECISION OF THE BOARD OF
IMMIGRATION APPEALS

File: A23 397 564—Houston

In re: ALI *YAZDCHI*

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Sam Williamson, Esquire
1320 Americana Building
Houston, Texas 77002

ON BEHALF OF SERVICE:
Corina E. Almeida
General Attorney

CHARGE:
Order: Sec. 241(a)(4), I&N Act [8 U.S.C. § 1251 (a)(4)]—Crimes involving moral turpitude

APPLICATION:
Termination of proceedings

In a decision dated November 8, 1985, the immigration judge found the respondent deportable on the charge set forth above and denied him the privilege of voluntry departure. The respondent has appealed from the finding of deportability. The appeal will be dismissed.

On May 8, 1985, an Order to Show Cause was issued alleging that the respondent is a native and citizen of Iran who was admitted to the United States in December 1977 as a student authorized to remain for the duration of status; that on August 5, 1981, his immigration status was adjusted to that of a lawful permanent resident of the United States as the spouse of a United States citizen; that on January 29, 1979, he was convicted in Justice of the Peace Court, Beaumont, Texas, of the offense of theft; and that on November 3, 1983, he was convicted in County Court #5, Houston, Harris County, Texas, of the offense of price tag switch. He was charged with deportability under section 241(a)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(4), for having after entry been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. On October 8, 1985, the Order to Show Cause was amended by a substituted allegation setting forth that the January 29, 1979, theft conviction was from the County Court of Jefferson County at Law No. 2, Jefferson County, Texas, rather than the Justice of the Peace Court, Beaumont, Texas. Counsel for the respondent admitted that the respondent was not a citizen or national of the United States, but refused to enter pleadings to the remaining allegations and instructed the respondent to remain mute.

To prove the respondent's deportability, the Service introduced a Form I-213 (Record of Deportable Alien); a certified copy of a judgment reflecting the conviction on January 29, 1979, of Ali Yazdchi of the offense of theft in the County Court of Jefferson County at Law No. 2, Jefferson County, Texas, pursuant to a plea of *nolo contendere;* a certified copy of a judgment reflecting

the conviction on November 3, 1983, of Ali Yazdchi of the offense of price tag switch in County Criminal Court at Law No. 5 of Harris County, Texas, pursuant to a plea of *nolo contendere;* Form I-94 (Arrival-Departure Record) reflecting the respondent's admission to the United States on December 28, 1977, as a student; and a Form I-181 (Memorandum of Creation of Lawful Permanent Residence) reflecting the respondent's adjustment to lawful permanent resident status as of August 5, 1981. The documents were accepted into evidence despite the objections of counsel for the respondent to the two conviction records.

The immigration judge found that the respondent's deportability as charged had been established by the documentary evidence submitted by the service.

On appeal, the respondent does not dispute that the two convictions were for crimes involving moral turpitude. Instead, he only challenges the admissibility of the documents which reflect the convictions for those crimes. He contends first that the admission into evidence of the conviction records was erroneous because they were tainted by the recital of the plea of *nolo contendere.* In support of this contention, the respondent cites to the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, the Texas Code of Criminal Procedure, and *General Electric Company v. City of San Antonio,* 334 F.2d 480 (5th Cir. 1964). In addition, he argues that the Service failed to prove that the conviction records referred to him.

The Service contends that the decision of the immigration judge is correct. It is argued that the conviction records were properly accepted into evidence, that it was

established that those records related to the respondent, and that those records establish the respondent's conviction of two crimes involving moral turpitude.

We reject the respondent's argument that the conviction records were improperly received into evidence. The Federal Rules of Evidence, the Federal Rules of Criminal Procedure, and the Texas Code of Criminal Procedure cited by the respondent on appeal are inapposite. Deportation proceedings are civil, not criminal, in nature and are not bound by the strict rules of evidence. *Tashnizi v. INS*, 585 F.2d 781 (5th Cir. 1978); *Matter of Barcenas*, Interim Decision 3054 (BIA 1988). Rather, the tests for the admissibility of documentary evidence in a deportation proceeding are that the evidence must be probative and that its use must be fundamentally fair. *Trias-Hernandez v. INS.*, 528 F.2d 366 (9th Cir. 1975); *Martin-Mendoza v. INS*, 499 F.2d 918 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975); *Marlowe v. INS*, 457 F.2d 1314 (9th Cir. 1972); *Matter of Barcenas, supra; Matter of Toro*, 17 I&N Dec. 340 (BIA 1980).

The conviction records in this case satisfied those tests because they were clearly probative on the issue of deportability under section 241(a)(4) of the Act and their use was not fundamentally unfair. The respondent made no showing that these certified records were not what they purported to be, that the information contained in them was incorrect, or that they did not relate to him. At the hearing, the respondent refused to offer any evidence at all, but did repeatedly acknowledge that his "full, true, and correct name" was "Ali Yazdchi" (Tr. at 5, 12, 23). The conviction records introduced at the hearing also bear the name "Ali Yazdchi." The fact that the names are identical, combined with the respondent's failure to show

that the conviction records do not relate to him, permits the inference that the conviction records do in fact relate to the respondent. *See Corona-Palomera v. INS,* 661 F.2d 814 (9th Cir. 1981); *United States v. Rebon-Delgado,* 467 F.2d 11 (9th Cir. 1972); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980); *Matter of Leyva,* 16 I&N Dec. 118 (BIA 1977); *Matter of Li,* 15 I&N Dec. 514 (BIA 1975); *Matter of Cheung,* 13 I&N Dec. 794 (BIA 1971).

Moreover, the respondent's contention, that consideration of conviction records based on pleas of *nolo contendere* is improper, is devoid of merit. A plea of *nolo contendere,* when accepted by the court, becomes for all practical purposes the full equivalent of a plea of guilty. *Matter of Fortis,* 14 I&N Dec. 576 (BIA 1974). In addition, in deportation proceedings an immigration judge is bound by a judgment of conviction and cannot go behind the judicial record. *See Avila-Murrieta v. INS,* 762 F.2d 733 (9th Cir. 1985); *Zinnanti v. INS,* 651 F.2d 420 (5th Cir. 1981); *Aquilera-Enriquez v. INS,* 516 F.2d 565 (6th Cir. 1975), *cert. denied,* 423 U.S. 1050 (1976); *Matter of Khalik,* 17 I&N Dec. 518 (BIA 1980); *Matter of McNaughton,* 16 I&N Dec. 569 (BIA 1978); *Matter of Fortis, supra.* The respondent's reliance on *General Electric Company v. City of San Antonio, supra,* on this issue is misplaced. In that case, which involved an interlocutory appeal arising in civil antitrust litigation, the court was construing section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), not any provision contained in the Immigration and Nationality Act. Moreover, the court in *General Electric Company* stated that it was *not* reaching the issue of whether prima facie effect under section 5(a) of the

Clayton Act should be given to judgments of conviction based on pleas of *nolo contendere*.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

/s/ JAMES P. MORRIS
For the Board

APPENDIX III

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
Houston, Texas

File No.: A 23 397 564

November 8, 1985

In the Matter of

ALI YAZDCHI, Respondent

IN DEPORTATION PROCEEDINGS

CHARGE:

Section 241(a)(4) of the Immigration and Nationality Act—conviction of two crimes involving moral turpitude after date of entry not arising out of single scheme of criminal, to wit, theft and price tag switch.

APPLICATIONS:

Continuance.

ON BEHALF OF RESPONDENT
Samuel Williamson, Esquire

ON BEHALF OF SERVICE:
Corina Almeda, Trial Attorney,
Houston INS

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a 25 year old, married, male, native and citizen of Iran. Pursuant to superceding Order to Show Cause issued May 8, 1985, respondent is charged

with deportibility in violation of Section 241(a)(4) of the Immigration and Nationality Act in that, allegedly after his entry into the United States, he's been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to wit, theft and price tag switch.

Deportation proceedings began before the Houston Immigration Court on August 6, 1985 at an in absentia hearing. Respondent had been sent a notice to appear on that date and the notice had been returned by the postal service indicating undeliverable as addressed (Exhibit 2). In support of the allegations and charge of deportability, the Immigration Service submitted form I-213, record of deportable alien (Exhibit 3). A record of the Jefferson County Court, entered January 29, 1979, evidencing that defendant Ali Yazdchi had been judged guilty of theft and as a result of this conviction, fined $100.00 (Exhibit 4) and a judgment of conviction issued by the Harris County Court, indicating defendant Ali Yazdchi had been convicted of the intent to defraud and harm another by the removal and substitution of a price tag (Exhibit 5). This latter conviction took place on November 3, 1983.

Proceedings were continued on August 6, 1985 in order to provide the Immigration Service with the opportunity to locate a second administrative file, that file being the file containing the records of respondent's adjustment of status. The Court felt that there might be information in that file that would assist in locating respondent so that he might personally appear in these proceedings. Additionally, the I-213 previously referenced, indicated that respondent was scheduled for sentencing

in May of 1985. The Court requested that the Trial Attorney, at the next hearing advise the Court of the disposition of those proceedings and the hearing was reset til September 11, 1985. A second notice was sent to respondent to appear on that date.

Respondent appeared on September 11, 1985 with an Attorney, R. P. Cornelius. Counsel was advised of the status of the case, provided with copies of all the Exhibits that had already been introduced into the record, and proceedings were continued for Mr. Cornelius' preparation.

On October 8, 1985, respondent appeared with current Counsel of record, Sam Williamson. On behalf of respondent, Counsel admitted allegation 1 on the Order to Show Cause and refused to plead regarding all of the remaining allegations. Mr. Williamson instructed his client to stand mute, even though he was advised that respondent had a duty to speak in these proceedings and that respondent's failure to speak when he had such a duty could be used to support adverse inferences. Additionally, counsel was advised that respondent could only preserve the right to refuse to speak by making a proper invocation of 5th Amendment Constitutional privileges. In any other Court, Mr. Williamson's conduct would have exposed him to potential contempt citation, however, this Court does not have that power.

As additional evidence, the Immigration Service presented form I-94 (Exhibit 6), and memorandum creation of record of lawful permanent resident, form I-181 (Exhibit 7). The I-94 and I-181 were admitted to the record without objection from respondent's Counsel.

Respondent's Counsel violently objected to the inclusion in the record of Exhibits 4 and 5, the conviction records relating to respondent. Counsel argues that because respondent entered a plea of nolo contendere on both of the convictions, the convictions were not capable of supporting the charge of deportability. The Court then reviewed the evidence presented by the Immigration Service and advised the parties of the following findings: Allegation 1 contained on the Order to Show Cause, that respondent was not a citizen or national of the United States was sustained based upon respondent's admission of alienage. Allegation 2, that respondent was a native and citizen of Iran, was sustained based upon the information contained on form I-94 and form I-181, which had been admitted to the record without objection by respondent. Allegation 3, that respondent entered the United States at New York, New York on or about December, 1977, was sustained based upon the information contained on form I-94. Allegation 4, that respondent was, at that time, admitted as a student was sustained, based upon the information contained on the form I-94. The additional part of the allegation 4, that respondent's student admission was to attend Jacksonville Community College for the duration of status was not sustained. The I-94 indicates that respondent had been granted permission to transfer to several different universities and colleges in the United States and there was no indication on the I-94 that Jacksonville Baptist Community College was one of these schools. Allegation 5, that on August 5, 1981, respondent's status was adjusted to that of a legal permanent resident in the United States as the spouse of a United States citizen, was sustained, based upon the I-181 contained in the record. Allegation

6, that respondent, on January 29, 1979 was convicted in the Justice of the Peace Court of Beaumont County, Texas for the offense of theft was not sustained. The information contained on Exhibit 4, conviction record, evidencing respondent's conviction for theft on January 29, 1979, was a record of the County Court of Jefferson County and not the Justice of the Peace Court in Beaumont, Texas. The Trial Attorney attempted to orally amend allegation 6 to reflect the Court named in Exhibit 4. Counsel objected to this informal means by which the Government attempted to amend and proceedings were continued to provide the Government with an opportunity to prepare a substituted allegation of deportability on form I-261 (Exhibit 1-A). Though the substituted allegation did not materially alter the nature of the proceedings or the charge against the respondent, the Court indicated it would grant Counsel's request for a continuance because of the intention of the Government to lodge the additional allegation. Proceedings were reconvened on October 22, 1985.

On October 22, 1985, Respondent continued to refuse to speak in these proceedings upon the advise of his Counsel. Counsel continued to refuse to either admit or deny the allegations despite advisement that pleadings are required by regulation. See 8 C.F.R. 242.16(b). Substituted allegation 6, reflecting a conviction of respondent on January 29, 1979, in the County Court of Jefferson County, for the offense of theft was sustained based upon the information contained in the certified conviction record included in the record of this hearing as Exhibit 4. The remaining allegation, allegation 7, that on November 3, 1983, respondent was convicted in the County Court 5, Houston, Harris County, Texas for the offense of price

tag switch, was sutained based upon the information contained in the certified conviction record, Exhibit 5.

Counsel continued to argue that it was fundamentally unfair to allow these convictions records to formulate a basis for a finding of deportability in light of respondent's plea of nolo contendere with regard to each of those criminal proceedings. However, this Court is without jurisdiction to entertain a collateral attack on the judgment of conviction, unless void on its face and the Court cannot go behind the judicial record or judicial finding of guilt. *Matter of Sirhan,* 13 I&N decisions 592, 594 (BIA 1970). Even if respondent had pled not guilty to those convictions as opposed to the nolo contendere plea, he would still be deportable in light of the fact that he was found guilty by the Court that had jurisdiction to make that determination. Both of the crimes for which respondent had been convicted are crimes involving moral turpitude, the first being theft and the second involving an intent to defraud. Accordingly, with the exception of the latter part of allegation 3, relating to attendance at Jacksonville Baptist College, all six allegations, as amended, were sustained and the charge of deportability pursuant to Section 241(a)(4) for having been convicted of two crimes in moral turpitude not arising out of a single scheme of criminal misconduct was sustained by evidence that is clear, convincing and unequivocal. Counsel was advised of the Court's findings and the proceedings moved to the relief stage.

Respondent declined to designate a country to which deportation would be directed in the event such an order were to be issued by the Court. The Court advised respondent that in the event a deportation order would be

issued, deportation would be directed to respondent's native country of Iran. Counsel indicated that respondent would be seeking withholding of deportation pursuant to Section 243(h) regarding the Court's designation.

The Court asked Counsel if there was any other relief from deportation that respondent would be seeking. Counsel indicated that he was unsure as to whether or not respondent would be applying for political asylum and the Court advised Counsel that because of respondent's conviction in the United States for two crimes involving moral turpitude, the asylum application would be denied as a matter of discretion. Pursuant to regulation, Counsel was advised that he would have ten days in which to submit a statement from respondent with regard to the 243(h) application and hearing on the merits of that application would be held on November 8, 1985. See, 8 C.F.R. 242.17(c).

Respondent failed to submit an application for withholding of deportation pursuant to Section 243(h). When the parties appeared before the Court on November 8th, Counsel advised the Court that respondent had married a United States citizen three days prior to hearing and that respondent contemplated that an I-130 would be filed in his behalf, believed that it would be approved and thereby allow for eligibility for adjustment of status pursuant to Section 245 of the Act. Counsel requested that deportation proceedings be continued further in order to allow time for the filing processing of the I-130.

The Trial Attorney objected to further continuance of these proceedings, primarily based upon the recency of the marriage. It is noted that these proceedings have been continued no less than four times and it was only

out of concern for respondent's status as a permanent resident despite his failure to appear at the first hearing scheduled on August 6, that these proceedings had not been completed on that date. An Immigration Judge may grant a continuance in his discretion if good cause is shown. See 8 C.F.R. 242.13. However, in the instant proceedings, this Court will not continue these proceedings any further. Respondent is not currently eligible for adjustment of status, an I-130 has not yet been filed, much less approved, and this Court sees no basis for continuing these proceedings on the prospect that the I-130 will be filed. There are no applications for discretionary relief currently pending before the Court, indeed, there are no applications for relief pending before the Court in light of the abandonment of the request for withholding of deportation. Accordingly, the following order shall be entered:

ORDER

IT IS HEREBY ORDERED that respondent be deported from the United States to Iran on the charge contained in the Order to Show Cause.

/s/ ROBERT BROWN
Robert Brown
Immigration Judge

APPENDIX IV

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No. _____

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

SUPERCEDING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

File No. A23 397 564

UNITED STATES OF AMERICA:

In the Matter of YAZDCHI, Ali, Respondent.
c/o United States Immigration Service,
2627 Caroline,
Houston, Texas 77004

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are native of Iran and a citizen of Iran;
3. You entered the United States at New York, New York on or about 12/77;
4. You were then admitted as an student to attend Jacksonville Baptist Community College for the duration of your status;

5. On August 5, 1981 your Immigration status was adjusted to that of a legal permanent resident in the United States as the spouse of a United States citizen;

6. You were on January 29, 1979, convicted in Justice of the Peace Court, Beaumont, Texas for the offense of theft;

7. You were on November 3, 1983 convicted in the County Court #5, Houston, Harris County, Texas for the offense of price tag switch.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(4) of the Immigration and Nationality Act, in that, you at any time after entry have been convicted of two (2) crimes involving moral turpetude not arising out of a single scheme of criminal misconduct, to wit theft and price tag switch.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at DATE, TIME, AND PLACE TO BE SET, and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: 5/8/85

/s/ VINCENT P. HENDERSON
Vincent P. Henderson, Asst.
District Director/Investigations
Houston, Texas

FORM I-618 ACCREDITED
REPRESENTATIVE LIST ATTCHED

NOTICE TO RESPONDENT

ANY STATEMENT YOU MAKE MAY BE USED AGAINST YOU IN DEPORATION PROCEEDINGS

THE COPY OF THIS ORDER SERVED UPON YOU IS EVIDENCE OF YOUR ALIEN REGISTRATION WHILE YOU ARE UNDER DEPORTATION PROCEEDINGS, THE LAW REQUIRES THAT IT BE CARRIED WITH YOU AT ALL TIMES

If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. You should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you should bring the original and certified translation thereof. If you wish to have the testimony of any witness considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Order to Show Cause and that you are deportable on the charge set forth therein. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. Failure to attend the hearing at the time and place designated hereon

may result in a determination being made by the Immigration Judge in your absence.

You will be advised by the Immigration Judge, before whom you appear, of any relief from deportation for which you may appear eligible. You will be given a reasonable opportunity to make any such application to the Immigration Judge.

NOTICE OF CUSTODY DETERMINATION

Pursuant to the authority of Part 242.2, Title 8, Code of Federal Regulations, the authorized officer has determined that pending a final determination of deportability in your case, and, in the event you are ordered deported, until your departure from the United States is effected, but not to exceed six months from the date of the final order of deportation under administrative processes, or from the date of the final order of the court, if judicial review is had, you shall be:

Released under bond in the amount of $4,000.00.

CERTIFICATE OF SERVICE

Served by me at Houston, Texas on May 8, 1985.

Personal Service

/s/ CARLA DANIELS C/T

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No. A23-397-564

UNITED STATES OF AMERICA:

In the Matter of

ALI YAZDCHI, Respondent.

In Deportation Proceedings under Section 242
of the Immigration and Nationality Act

ADDITIONAL CHARGES OF DEPORTABILITY

To: Sam Williamson
1330 Americana Bldg.
Houston, TX 77002

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

There is submitted the following factual allegation in substitution set forth in the order to show cause and notice of hearing:

6. You were on January 29, 1979 convicted in the County Court of Jefferson County at Law No. 2, Jefferson County, Texas, for the offense of theft.

Date: Oct. 8, 1985.

/s/ Signature Illegible

APPENDIX V

3201/C11—Plea of Guilty or Nolo Contendere/Rest after arrg/Rev. 6-83

MINUTES OF THE COUNTY CRIMINAL COURT AT LAW NO. 5 OF HARRIS COUNTY, TEXAS AT THE OCTOBER TERM, A.D. 1983

JUDGMENT

Date: November 3, 1983.

NO. 736657

THE STATE OF TEXAS

v.

ALI YAZDCHI

Attorney for State:
Asst. Dist. Atty. Maria Hayes

Attorney for Defendant:
Andrew Lannie (Retained)

Waiver of Attorney [N/A]:
The Defendant knowingly, intelligently and voluntarily waived the right to representation by counsel.

Offense:
Price Tag Switch as charged in the information.

Plea to Offense:
Nolo Contendere

Plea to Enhancement:
N/A

Findings on Enhancement: (Second Offender)

The Defendant is the same person N/A previously convicted of N/A as alleged in the information.

Punishment:

Fine of $200.00 and 3 days confinement in the Harris County Jail.

Date of Offense:

October 27, 1983

Credit:

2 days confinement in jail.

The Defendant having been charged in the above entitled and numbered cause for the misdemenor offense shown above, and this cause being this day called for trial, the State appeared by her District Attorney as named above and the Defendant named above, appeared in person and either by Counsal as shown above or waived counsel as indicated above, and both parties announced ready for trial. The said Defendant was arraigned and in open court pleaded as indicated above to the charge contained in the information. On this the ____ day of N/A, A.D., 19__, the court reset this case to the ____ day of N/A , A.D. 19__ for N/A.

On the 3rd day of November, A.D. 1983, the Defendant knowingly, intelligently, voluntarily and expressly wavied trial by jury. Trial proceeded before the Court; and after having heard the information read, the Defendant's above indicated plea thereto, and the evidence submitted, the Court found the Defendant guilty of the offense indicated above, a misdemeanor, and assessed the punishment indicated above.

It is therefore CONSIDERED, ORDERED, AND ADJUDGED by the Court that the Defendant is guilty of the offense indicated above, a misdemeanor, and that the said Defendant committed the said offense on the date indicated above and that he be punished as indicated above, and that the State of Texas do have and recover of the Defendant all costs of the prosecution, for which execution will issue.

And thereupon the said Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant, to pronounce sentence against him as follows, to wit: "It is the order of the Court that the Defendant (named above) who has been adjudged to be guilty of the above stated offense, a misdemeanor, and whose punishment has been assessed (as shown above), forthwith be committed to the custody of the Sheriff of Harris County, Texas, who shall confine him in the Harris County Jail for the above indicated period and until the fine and costs are fully paid and satisfied in accordance with law.

And credit defendant as indicated above.

Signed and entered this the 3rd day of November, A.D. 1983.

/s/ Signature Illegible
Judge, County Criminal Court at
Law No. 5 of Harris County, Texas

APPENDIX VI

NO. 84775

IN THE COUNTY COURT OF
JEFFERSON COUNTY AT LAW NO. 2
JEFFERSON COUNTY, TEXAS

ENTERED AS OF JAN. 29, 1979

CHARGE: Theft (A)

THE STATE OF TEXAS

v.

ALI YAZDCHI

On this the 29th day of January, A.D., 1979, this cause being called for trial, came the Criminal District Attorney for the State of Texas, and the Defendant in person and by counsel, Bernard Packard, appeared in open Court, both parties announced ready for trial, and the Defendant, having been duly arraigned, pleaded Nolo Contendere to the charge contained in the information herein, and waiving a jury, submitted this cause to the Court.

After hearing the evidence upon such plea and considering same, the Court adjudged the Defendant guilty and assessed him punishment at a fine of $100.00 and/or —— days in jail and all costs of this prosecution.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Defendant, Ali Yazdchi, be committed to the custody of the Sheriff of Jefferson County, Texas, until all such fine and costs are fully paid

and time is fully served, and execution may issue against the property of said Defendant for the amount of such fine and costs.

This Defendant is given credit for —— days already served in the Jefferson County Jail, to apply to this judgment.

Fine and cost due by 2-14-79.

/s/ Signature Illegible
Judge Presiding

SENTENCE

On this the 29th day of January, A.D., 1979, this cause again being called, the State appeared by the Criminal District Attorney of Jefferson County, Texas, and the Defendant appeared in person and by counsel, Bernard Packard, for the purpose of having sentence of law pronounced in accordance with the verdict and judgment rendered against him on the 29th day of January, A.D., 1979; said Defendant having waived the statutory ten days within which to file Motions for New Trial and The Arrest of Judgment herein;

And thereupon the said Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced against him and he answered nothing in bar thereof, whereupon the Court proceeded, in presence of said Defendant, to pronounce sentence against him as follows, to-wit:

It is the order of the Court that the Defendant, Ali Yazdchi, who has been adjudged guilty of Theft (A), a misdemeanor, and whose punishment has been assessed at a fine of $100.00, and all costs of this prosecution and confinement in the County Jail of Jefferson County, Texas, for —— be delivered to the Sheriff of Jefferson County, Texas, for the confinement in the County Jail of Jefferson County, Texas, for said period of —— and until said fine or $100.00 dollars and all costs of this prosecution are paid or discharged by law.

And execution may issue against the property of said Defendant for the amount of such fine and costs.

This Defendant is given credit for —— days already served in the Jefferson County Jail, to apply to this sentence.

Fine and cost due by 2-14-79.

/s/ Signature Illegible
Judge Presiding

THE STATE OF TEXAS)

COUNTY OF JEFFERSON)

I R. L. BARNES, Clerk, County Court of Jefferson County at Law No. 2, Jefferson County, Texas, do hereby certify that the above and foregoing is a true and correct copy of Judgment in Cause No. 84775, styled The State of Texas vs. Ali Yazdchi, as the same appears on file and of record in my office.

GIVEN UNDER MY HAND AND SEAL OF COURT, this the 2nd day of May, A.D., 1985.

R. L. BARNES, Clerk, County
Court, Jefferson County at Law
No. 2, Jefferson County, Texas

By /s/ LAVONE ROSS, Deputy